

05-1700-CBS

**AFFIDAVIT OF DONALD F. FREEMAN**

I, Donald F. Freeman, being duly sworn, hereby depose and state as follows:

1. I am a Deputy U.S. Marshal and have been so employed for approximately eight years.

2. This affidavit is made in support of a criminal complaint charging Frank Merlino ("Merlino"), whose date of birth is May 29, 1957, with escape from the custody of the Attorney General, in violation of 18 U.S.C. § 751(a). The facts contained herein are based on my own investigation of this matter, as well as information I have received from other law enforcement officials and Bureau of Prison personnel.

3. On May 21, 1997, following his conviction for making a false statement on a credit card application, in violation of 18 U.S.C. § 1014, and bank fraud, in violation of 18 U.S.C. § 1344, Merlino was sentenced in United States District Court for the District of New Hampshire to the custody of the Attorney General for a term of 78 months. On June 30, 1997, following his conviction in the District of New Hampshire for use of an unauthorized access device, in violation of 18 U.S.C. § 1029(A)(2), Merlino was sentenced to a 21-month consecutive sentence of incarceration, resulting in a total custodial sentence of 99 months.

4. Merlino was thereafter relinquished to the custody of the Bureau of Prisons ("BOP"), which designated him to serve his sentence in various BOP facilities during its pendency. In 2000, he was transferred to FCI Forrest City, in Forrest City, Arkansas.

5. On February 10, 2004, Merlino began Pre-release Programming at the Coolidge House Community Corrections Center at 307 Huntington Avenue, Boston, Massachusetts ("CCC"). His projected date for release from BOP custody was August 7, 2004.

6. On April 29, 2004, the BOP placed Merlino on home confinement at a residence owned by his parents, 250 Main Street, Apartment 4, Charlestown, Massachusetts. Merlino was employed at that time by All Weather Remodeling in Everett, Massachusetts and had been so employed since February 17, 2004.

7. In conjunction with his placement on home confinement, on April 6, 2004, Merlino signed a BOP form agreeing to 16 specified conditions. These included the requirement that he reside at the agreed-upon residence in Charlestown, that he remain at said residence except for employment or unless otherwise authorized, and that he accept phone calls from the CCC staff to verify his presence at his

home and job site.

8. On May 24, 2004, Merlino was instructed by the CCC staff to call the CCC between 6:00 and 8:00 A.M., but no call was received. His employer was contacted and advised that Merlino had not arrived for work that day. Merlino's father was then contacted and he advised that he had not seen his son since the previous day.

9. On the afternoon of May 24, 2004, the BOP contacted the United States Marshals Service ("USMS") to report that Merlino had absconded from home confinement. The USMS immediately commenced efforts to locate Merlino but were unable to do so.

10. On May 11, 2005, Merlino was arrested in Myrtle Beach, South Carolina by special agents of the United States Secret Service. According to Special Agent Brian Kirby's arrest report, on May 10, 2005 the Secret Service field office in Columbia, South Carolina received a citizen complaint about possible identity theft by Merlino. Special Agent Kirby conducted an NCIC database search on Merlino and learned of his escape status. The following day, May 11, 2005, Special Agent Kirby and other Secret Service agents arrested Merlino at the latter's residence at 648 Canterbury Drive, Myrtle Beach, South Carolina.

11. Following his arrest, Merlino was returned to the custody of the BOP to finish serving his sentence.

12. Based on the foregoing, there is probable cause to believe that on May 24, 2004, Frank Merlino did knowingly escape from an institution and facility in which he was confined by direction of the Attorney General pursuant to a judgment of conviction entered in the United States District Court for the District of New Hampshire, in violation of 18 U.S.C. § 751(a).

Donald F. Freeman

Donald F. Freeman  
Deputy U.S. Marshal

Subscribed and sworn to before me this 20<sup>th</sup> day of July 2005.

Charles E. Swartz  
CHARLES E. SWARTZ, Jr.  
Chief U.S. Magistrate Judge



**Criminal Case Cover Sheet****U.S. District Court - District of Massachusetts**Place of Offense: \_\_\_\_\_ Category No. II Investigating Agency U.S. MARSHALSCity Charlestown Related Case Information:County Suffolk Superseding Ind./ Inf. \_\_\_\_\_ Case No. \_\_\_\_\_  
Same Defendant \_\_\_\_\_ New \_\_\_\_\_  
Magistrate Judge Case Number \_\_\_\_\_  
Search Warrant Case Number \_\_\_\_\_  
R 20/R 40 from District of \_\_\_\_\_**Defendant Information:**Defendant Name Frank Merlino Juvenile ☐ Yes ☒ No

Alias Name \_\_\_\_\_

Address USP Atlanta, 601 McDonough Blvd., S.E., Atlanta, GA 30315-0182Birth date (Year only): 1957 SSN (last 4 #): \_\_\_\_\_ Sex M Race: Caucasian Nationality: USA

Defense Counsel if known: \_\_\_\_\_ Address: \_\_\_\_\_


Bar Number: \_\_\_\_\_

**U.S. Attorney Information:**AUSA James Lang Bar Number if applicable \_\_\_\_\_Interpreter: ☐ Yes ☒ No List language and/or dialect: \_\_\_\_\_Matter to be SEALED: ☐ Yes ☒ No☒ Warrant Requested ☐ Regular Process ☐ In Custody**Location Status:**

Arrest Date: \_\_\_\_\_

☒ Already in Federal Custody as sentenced prisoner in USP Atlanta☐ Already in State Custody \_\_\_\_\_ ☐ Serving Sentence ☐ Awaiting Trial☐ On Pretrial Release: Ordered by \_\_\_\_\_ on \_\_\_\_\_Charging Document: ☒ Complaint ☐ Information ☐ IndictmentTotal # of Counts: ☐ Petty \_\_\_\_\_ ☐ Misdemeanor \_\_\_\_\_ ☒ Felony 1

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☒ I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.Date: July 21, 2005Signature of AUSA: 

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District Court Case Number (To be filled in by deputy clerk): \_\_\_\_\_

Name of Defendant Frank Merlino

## U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>18 U.S.C. § 751(a)</u>	<u>Escape</u>	<u>1</u>
Set 2	_____	_____	_____
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set	_____	_____	_____
Set	_____	_____	_____
Set	_____	_____	_____
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Set	_____	_____	_____

ADDITIONAL INFORMATION: